Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

EDWARD G. TINSLEY,

Petitioner,

versus

EQUIFAX CREDIT INFORMATION SERVICES, INCORPORATED, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

EDWARD G. TINSLEY
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Petitioner

38 pp

QUESTIONS PRESENTED

1. Did the District of Columbia Circuit correctly hold that a trial judge can collaterally estop a subsequent action when a prior action, making the same claims, involved district court violations of the Seventh Amendment?

2. In civil actions, where legal claims are present, or, where legal and equitable claims are combined in a single lawsuit, are parties entitled to jury trial as of right?

3. Did the District of Columbia Circuit correctly hold that res judicata bars relitigation of a claim alleging Seventh Amendment violations, even if the basis for the lower court decision in the prior action was incorrect?

PARTIES

The parties in this Court and the courts below are as follows:

Petitioner: Edward G. Tinsley, who was the plaintiff in the district court and the appellant in the court of appeals.

Respondents: Equifax Credit Information Services, Incorporated, and Experian Information Solutions, Incorporated, formerly known as TRW Systems and Services, Incorporated, who were defendants in the district court and appellees in the court of appeals.

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PETITION FOR WRIT OF CERTIORARI

The petitioner urges that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit which affirmed, *in banc*, a lower court decision which denied the petitioner the right to jury trial on a legal claim.

OPINIONS BELOW

The June 2, 1999 opinion of the United States Court of Appeals for the District of Columbia Circuit is reprinted at Appendix A to this petition, pg. App. 1. The February 11, 1999 opinion of the District Court is reprinted at Appendix B to this petition, pg. App. 4. The April 21, 1999 order of District Court granting fees and costs is reprinted at Appendix C to this petition, pg. App. 9. The July 26, 1999 Appellate Court order denying petition for rehearing *in banc* is reprinted at Appendix D to this petition, pg. App. 11.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on June 2, 1999. The date of the order respecting rehearing was entered on July 26, 1999. The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari is grounded upon Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

Amendment VII of the United States Constitution provides:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

STATEMENT OF THE CASE

Petitioner filed a civil action in federal court against the respondents for failing to follow reasonable procedures to assure maximum possible accuracy of the information concerning the petitioner, prior to publishing credit reports on the petitioner. (See Title 15 U.S.C. § 1681e(b)). District Court dismissed petitioner's action, without jury, based on res judicata to an earlier action that petitioner filed against the respondents, containing legal and equitable issues. Appellate Court affirmed. The basis for federal jurisdiction in the court of first instance was under Title 28 U.S.C. § 1331 (federal question jurisdiction).

The instant case is a case which involves two prior cases. They are as follows:

(1) *Tinsley v. TRW Inc.*, 879 F.Supp. 550 (D.Md. 1995), aff'd, 64 F.3d 659 (4th Cir. 1995), certiorari denied, 116 S.Ct. 710 (1996). This case will be referred to as *"Tinsley I."*

(2) *Tinsley v. TRW Inc.*, 96 cv 273 (S.D.Md. Sept. 27, 1996), aff'd, 113 F.3d 1232 (4th Cir. May 1997), certiorari denied, 118 S.Ct. 563 (1997), petition for rehearing denied, 118 S.Ct. 873 (1998). This case will be referred to as *"Tinsley II."*

(3) *Tinsley v. Equifax Credit Information Services, Inc.*, 98 cv 00940 (D.D.C. Feb. 11, 1999), aff'd, 99-7031 (D.C.Cir. June 2, 1999). This case will be referred to as such, referred to as the "instant case," or as *"Tinsley III."*

All cases were dismissed without trial by jury.

REASONS FOR GRANTING THE WRIT

I. THE DISTRICT OF COLUMBIA CIRCUIT HAS ENTERED A DECISION IN CONFLICT WITH A PRIOR DECISION OF THE UNITED STATES SUPREME COURT

Petitioner combined both legal (15 U.S.C. § 1681e(b)) and equitable (15 U.S.C. § 1681n) claims in one lawsuit against the respondents under the Fair Credit Reporting Act. (FCRA). (See pg. App. 13). Petitioner demanded a jury trial on all issues of fact. Appellate court entered a decision to dismiss petitioner's case without jury trial based on res judicata to a prior action where legal and equitable claims were combined in a single lawsuit.

Dismissal conflicts with this Court's decision in *Lytle v. Household Mfg., Inc.*, 110 S.Ct. 1331 (1990), which held:

> "When legal and equitable claims are joined in the same action, the right to jury trial on the legal claim, including all issues common to both claims, remains intact."

Petitioner argued that this action, and two prior actions, contained legal issues. However, argument was not necessary. It is undisputed that each action contained legal issues, as respondents stated in district court on June 9, 1998, that, "Plaintiff, in all three of his actions has brought only legal claims under the Fair Credit Reporting Act ("FCRA") against the defendants."

Thus, petitioner is entitled to jury on his legal claim. Other courts have ruled:

> "If issues are purely legal rather than equitable, parties are entitled to jury as a matter of right." *Hargrove v. American Cent. Ins. Co.*, 125 F.2d 225 (10th Cir. 1942).

> "Rule 38(a) supports principle that right to trial by jury of legal claims must be preserved, even though legal issues are incidental to equitable issues." *Dairy Queen v. Wood*, 369 U.S. 469, 8 L.Ed.2d 44, 82 S.Ct. 894 (1962).

> "Although constitutional guarantee of jury trial extends only to claims for legal relief, and equitable claims are properly tried only to judge, when legal and equitable claims are tried together, common questions of fact must be decided by jury in order to preserve integrity of Seventh Amendment guarantee." *Heyman v. Kline*, 456 F.2d 123 (2d Cir. 1972).

Relative to the instant action being collaterally estopped on the basis of res judicata, this Court held in *Lytle v. Household Mfg. Inc.*, 110 S.Ct. 1331 (1990), that:

> "The Seventh Amendment precludes according collateral estoppel effect to a district court's determinations of issues common to equitable and legal claims where the court resolved the equitable claims first solely because it erroneously dismissed the legal claims."

II. THE DISTRICT OF COLUMBIA CIRCUIT HAS ENTERED A DECISION IN CONFLICT WITH ITS OWN CIRCUIT

Petitioner combined legal and equitable claims in the same action. The D.C. Circuit has entered a decision allowing district courts to resolve those claims that are for it to determine *before* jury resolves any common issue of a fact. A prior decision of the D.C. Circuit held:

> "When legal and equitable claims are joined in same action, jury must resolve any common issue of fact, and then district court can resolve those claims that are for it to determine." *Material Supply Int'l, Inc. v. Sunmatch Indus. Co.*, 331 U.S. App.D.C. 42 (1998).

In addition, the D.C. Circuit's decision in *Material Supply*, embraces this Court's holding in *Lytle*.

III. THE DISTRICT OF COLUMBIA CIRCUIT HAS ENTERED A DECISION IN CONFLICT WITH THE FOURTH CIRCUIT

The D.C. Circuit has entered a decision where a prior district court resolved issues common to petitioner's (1) legal claim and (2) equitable claim, both, and as a result, petitioner's legal claim was erroneously dismissed. The Fourth Circuit held in *Keller v. Prince George's County*, 923 F.2d 30 (4th Cir. 1991), that:

> "If district court resolves issues common to both legal and equitable claim as result of erroneous dismissal of legal claim, determinations by district court do not collaterally estop later jury trial of legal claim."

The D.C. Circuit has entered a decision in conflict with the Fourth Circuit on the same important matter. See Supreme Court Rule 10(a).

IV. DISTRICT COURT OPINION, RULINGS, AND ORDERS REFLECT BIAS AGAINST THE PETITIONER

DISTRICT COURT OPINION

A. A motion for disqualification filed by the petitioner was denied, however Court opinion erases all doubt whether bias existed. Opinion states that petitioner's lawsuit was a frivolous action, and implied that petitioner's case was not a deserving case.

B. Opinion states that petitioner's action interferes with efficient judicial administration.

C. Despite numerous court rulings stating that parties are entitled to jury on legal issues raised, opinion maintained that, "there is no reasonable legal basis that justifies plaintiff filing this third suit."

DISTRICT COURT RULINGS

D. Petitioner was denied due process, not only as to the right of trial by jury. The respondents asserted a Federal Rules of Civil Procedure ("FRCP") Rule 12(b)(6) defense. (Motion to dismiss for failure to state a claim.)

Court denied petitioner's application for a hearing, pursuant to Rule 12(d) FRCP, thus a denial of due process.

Once a party asserts a defense under Rule 12(b)(1)-(7), upon application of any party, district court has two choices. Court can (1) hear and determine the defense before trial, or court can (2) defer the hearing and determination of the defense thereof, until trial. (See Rule 12(d) FRCP). No provision exists under Rule 12 for court to deny hearing *and* trial.

E. The respondents never answered the petitioner's complaint, yet, Court granted a motion for summary judgment and a motion for sanctions in favor of the respondents. This violates Rule 7(a) FRCP which holds that, "There shall be a complaint and an answer," and that, "No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer."

F. Court denied the petitioner's cross-motion for summary judgment, when, according to the laws of the D.C. Circuit, the cross-motion should have been granted.

The petitioner was entitled to judgment as a matter of law, respondents failed to raise a genuine issue of material fact, and also failed to file a proper Local Rule 108(h) statement in opposing the petitioner's cross-motion for summary judgment.

Twist v. Meese, 854 F.2d 1421 (D.C.Cir. 1988) held:

> "The importance of complying with the procedures originally established by former Local Rule 1-9(h), and now continued in Local Rule 108(h), has been emphasized by the courts of this Circuit. The failure to file a proper Rule 1-9(h) statement (now a 108(h) statement) in opposing a motion for summary judgment, may be fatal to the position of the non-complying party." (citing *Gardels v. Central Intelligence Agency*, 637 F.2d 770 (D.C.Cir. 1980); *Tarpley v. Greene*, 684 F.2d 1, 6 & n. 15 (D.C.Cir. 1980).

G. Court granted respondents' motion for sanctions without affording the petitioner (1) reasonable notice, (2) an opportunity to show cause, (3) a hearing. Petitioner was allowed to submit opposition only to the *"amount"* (See pg. App. 6) of sanctions while being strictly prohibited from presenting argument as to respondents' entitlement to sanctions. (See pg. App. 9). No procedural due process was afforded, here. The Ninth Circuit stated in *Miranda v. Southern Pac. Transportation Co.*, 710 F.2d 516, 522-523 (9th Cir. 1983) that:

> "There are, in fact, several compelling reasons why notice, an opportunity to prepare a defense, and a hearing are required before sanctioning counsel. These procedural requirements will ensure that: (1) the attorneys will have an opportunity to prepare a defense and to explain

> their questionable conduct at a hearing; (2) the judge will have time to consider the severity and propriety of the proposed sanction in light of the attorneys explanation for their conduct; and (3) the facts supporting the sanction will appear in the record, facilitating appellate review."

The Third Circuit vacated an order and remanded the case of *Eash v. Riggins Trucking, Inc.*, 757 F.2d 557 (3d Cir. 1985), on the ground that the imposition of a monetary sanction by the district court without affording the attorney prior notice and an opportunity to be heard, violated due process. The Court looked to Federal Rule of Appellate Procedure ("FRAP") 46(c) to support the claim that district courts may not impose disciplinary sanctions on attorneys until after "reasonable notice and an opportunity to show cause to the contrary, and after a hearing, if requested."

This Court also affords a party (1) reasonable notice, (2) an opportunity to show cause, and (3) a hearing, prior to imposing disciplinary action/sanctions. Supreme Court Rule 8.2. This is standard procedure in this Court and in the appellate Circuits. District court should not be held to a lesser standard.

DISTRICT COURT ORDERS

H. Court ordered petitioner to pay reasonable costs and attorneys' fees to the respondents. This conflicts with the FCRA, as attorneys' fees are allowable *only* to *enforce any liability*, not to defend any liability, under the FCRA. A plaintiff is the only party who can bring suit in order to

enforce liability, thus only plaintiffs are entitled to attorney fees in FCRA actions. (See 15 U.S.C. § 1681n(3)). Pg. App. 13.

The Ninth Circuit agrees. *Guimond v. Trans Union Credit Information Co.*, 45 F.3d 1329 (9th Cir. 1995), held:

> "Only plaintiffs are entitled to recover attorney fees under the F.C.R.A." To award the defendant attorney fees, "would have a chilling effect on consumer claims challenging potentially inaccurate credit reporting practices."

Court was biased in this case. The Supreme Court, not long ago, in *Bracy v. Gramley*, 117 S.Ct. 1793 (1997), *Id.* 1797, held that the floor established by the Due Process Clause clearly requires a "fair trial in a fair tribunal," *Withrow v. Larkin*, 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1995), before a judge with no actual bias against a party. It has also been held that a litigant is denied due process if he is in fact treated unfairly. (See *Margoles v. Johns*, 660 F.2d 291 (7th Cir. 1981), certiorari denied, 102 S.Ct. 1256, 455 U.S. 909, 71 L.Ed.2d 447.

V. APPELLATE COURT, RULINGS, OPINION, AND APPEARANCE OF IMPROPRIETY REFLECT BIAS AGAINST THE PETITIONER

APPELLATE COURT RULINGS

A. The Court granted respondents' motion for summary affirmance. In opposition to the motion, petitioner stated to Appellate Court in a pleading dated April 12, 1999 that:

> "However the 'inescapable' fact here, is that appellant Tinsley is entitled to a jury trial on his

> legal claim, which he has not had, and unless appellees can forward to this Court legal authority which supports the position that appellant Tinsley IS NOT ENTITLED TO A TRIAL BY JURY, by REPLY or otherwise, then, appellees' Motion For Summary Affirmance should be denied."

Motion for summary affirmance should have been denied, as respondents failed to forward to Appellate Court any legal authority supporting the position that petitioner WAS NOT ENTITLED to trial by jury.

B. Court denied petitioner's motion for sanctions, which should have been granted. Counsel for respondents did not deny making false statements of material fact in district court. Counsel for respondents did not deny making false statements of material fact in appellate court. These infractions are violative of Rule 3.3(a)(1) of the District of Columbia Rules of Professional Conduct, which states that, (a) "A lawyer shall not knowingly;" (1) "Make a false statement of material fact or law to a tribunal."

Petitioner demonstrated that he was entitled to relief under FRAP 46(b), and D.C. Circuit Rule 38.

C. Court denied petitioner's motion for summary reversal, even though, in opposition, respondents did not offer a valid reason for denying the motion.

APPELLATE COURT OPINION

D. Court Opinion concludes that, "Even assuming a question exists as to whether the Fourth Circuit had

jurisdiction in *Tinsley II*, it is clear that the court's resolution of the issues in *Tinsley I* precludes the instant action."

This conclusion was soundly rebutted.

E. Court Opinion concludes that, "Even though appellant demanded a jury trial, he was not entitled to one because summary judgment had been granted in appellees' favor." Opinion does not cite *any* legal authority which supports this position. Opinion goes on to state:

> "Furthermore, res judicata bars relitigation of appellant's claim even if the basis for the district court's initial decision in *Tinsley I* was incorrect. See *Page v. United States*, 729 F.2d 818, 820 (D.C.Cir. 1984) (res judicata still applies even if initial judgment was erroneous.)"

First of all, this holding reverses this Court's decision in *Lytle v. Household Mfg. Inc.*, 110 S.Ct. 1331 (1990), in which this Court held:

> "In this case, petitioner brought both legal and equitable claims in the same action, but the District Court erroneously dismissed the legal claims. We must determine whether the District Court's resolution of the issues raised by petitioner's equitable claims bars relitigation of the same issues before a jury in the context of his legal claims. We hold that collateral estoppel does not preclude relitigation of those issues in these circumstances." *Id.* 1334.

Secondly, petitioner argued that this Court's decision in *Lytle* (1990), and the D.C. Circuit's decision in *Material Supply* (1998), supersedes and overrides legal authority in *Page* (1984). Petitioner's argument was rejected.

Third, the D.C. Circuit's decision in *Page* was res judicata as to a *defense* (statute of limitations), and *not* res judicata as to the entire action.

Fourth, *Page* was reversed and remanded by the D.C. Circuit.

APPELLATE COURT APPEARANCE OF IMPROPRIETY

F. A member of the D.C. Circiut who sat on the panel in *Material Supply*, which held that jury first must resolve any common issue of fact before district court can resolve those claims that are for it to determine, was also a member of the panel in the instant case, *Tinsley III*, and held that district court *can* resolve those claims that are for it to determine before jury resolves any common issue of fact.

VI. MISCELLANEOUS REASONS WHY WRIT SHOULD BE GRANTED

A. The D.C. Circuit has legal authority in *Material Supply*, to grant jury trial of legal/legal and equitable issues. If writ is not granted, the D.C. Circuit will *also* have legal authority in *Tinsley III*, to *deny* jury trial of legal/legal and equitable issues. So, just who ultimately decides whether a party receives a jury trial relevant to these issues? Not the Constitution of the United States, not the Supreme Court of the United States, but the judges of the D.C. Circuit, in cases within their jurisdiction which are not appealed to this Court. In addition, other appellate Circuits may be able to cite from legal authority created in *Tinsley III* in order to affirm lower

court violations of the Seventh Amendment in their respective circuit.

B. The case at hand is a case which sounds in tort, as petitioner claimed that respondents were liable to him for failing to employ reasonable procedures to ensure maximum possible accuracy of information concerning him, when his credit reports were prepared. Petitioner demanded monetary relief. Recently, this Court ruled that:

> "At time of adoption of Seventh Amendment, in suits sounding in tort for money damages, questions of liability were decided by the jury, rather than the judge, in most cases." U.S.C.A. Const.Amend.7. *City of Monterey v. Del Monte Dunes*, 119 S.Ct. 1624 (1999). *Id.* 1626.

This Court also held in this case, that, "General rule is that monetary relief is legal, as opposed to equitable."

C. Court in *Andrews v. Trans Union Corp., Inc.*, 7 F.Supp.2d 1056 (C.D.Cal. 1998), held:

> "Question as to reasonableness of procedures employed by consumer reporting agency to ensure the maximum possible accuracy of information included in credit report is question of fact for jury in overwhelming majority of cases under the Fair Credit Reporting Act (FCRA)." Consumer Credit Protection Act, § 607(b), as amended, 15 U.S.C.A. § 1681e(b) (See also *Guimond*, supra, (9th Cir. 1995) *Id.* 1333, last sentence.)

D. This Court has ruled that conventional notions of finality of litigation have no place where an infringement

of constitutional rights is alleged. (See *Sanders v. U.S.*, 373 U.S. 1, 8, 83 S.Ct. 1068, 1073, 10 L.Ed.2d 148 (1963).)

E. If writ is not granted, legal authority created in *Tinsley III*, will give express authority to the D.C. Circuit to enter decisions which violate Seventh Amendment provisions of the Constitution of the United States, and express authority to enter decisions which conflict with prior decisions of this Court.

The D.C. Circuit will also have legal authority to enter decisions which directly conflict with prior decisions of their Circuit and other appellate circuits. This is compelling.

Equally compelling is that the D.C. Circuit Rules demand publication of this proceeding, as appellate decision (1) alters a rule of law previously announced by the D.C. Circuit, decision (2) questions existing law, and decision (3) conflicts with the decision of another circuit. D.C. Circuit Rule 36(a)(2) states:

> Published Opinions. An opinion, memorandum, or other statement explaining the basis for the court's action in issuing an order or judgment *shall be published* if it meets one or more of the following criteria:
>
> > (B) it alters, modifies, or significantly clarifies a rule of law previously announced by the court;
> >
> > * * *
> >
> > (D) it criticizes or questions existing law;

> (E) it resolves an apparent conflict in decisions within the circuit or creates a conflict with another circuit.

In addition, appellate decision in this case overrules a prior *panel* decision of the D.C. Circuit, with an *in banc* determination. (See Circuit Rule 35.) Accordingly, Opinion warrants publication in light of other factors that give it general public interest. (See Circuit Rule 36(a)(2)(G)).

In concluding, petitioner has been denied equal justice under the U.S. Constitution. The petitioner has also been denied equal justice under the law of *Lytle, Material Supply, Keller,* and a host of at least twenty-five other laws (as listed in petitioner's motion for summary reversal), all maintaining that parties are entitled to jury trial on all legal claims presented, and parties are also entitled to jury trial when legal and equitable claims are combined in a single action.

This is petitioner's third suit in this matter. *Tinsley I* was dismissed without trial by jury when legal and equitable issues were raised, when a jury was demanded as provided by the rules, and when genuine material facts were in dispute. *Tinsley II* and *Tinsley III* were dismissed on the basis of res judicata. *Tinsley I* also contained allegations of negligence, and questions of negligence are usually for fact-finder. (See *Flying Diamond Corp. v. Pennaluna and Co. Inc.*, 586 F.2d 707 (9th Cir. 1978)). There are situations in which the normal consequences of res judicata would undermine specific objectives of constitutional proportions, and when that is so, successive suits on the same claims are permitted. (See Restatement Second of Judgments, § 26(d) (1982)). This is one such situation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Petitioner

United States Court of Appeals
For the District of Columbia Circuit

No. 99-7031 **September Term, 1998**

98cv00940

Edward G. Tinsley,
Appellant

v.

Equifax Credit Information Services, Inc. and Experian Information Solutions, Inc., *f/k/a* TRW Information Services,

Appellees

(Filed Jun. 2, 1999)

(Entered Jun. 2, 1999)

BEFORE: Edwards, Chief Judge; Wald and Silberman, Circuit Judges

ORDER

Upon consideration of appellant's motion for summary reversal, opposition thereto, and reply; appellees' motion for summary affirmance and the opposition thereto; and appellant's motion for sanctions, the opposition thereto, and the reply, it is

ORDERED that the motion for summary reversal be denied, and that the motion for summary affirmance be granted substantially for the reasons stated by the district court in its order filed February 11, 1999. The merits of the parties' positions are so clear as to warrant summary action. *See Taxpayers Watchdog, Inc. v. Stanley,* 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); *Walker v. Washington,*

627 F.2d 541, 545 (D.C. Cir.) (per curiam), *cert. denied*, 449 U.S. 994 (1980). The district court correctly determined that appellant's claims were barred by the doctrine of res judicata. *See Tinsley v. TRW, Inc., et al.*, 879 F. Supp. 550 (D. Md. 1995), *aff'd*, 64 F.3d 659 (4th Cir. 1995) (unpub. dec.), *cert. denied*, 516 U.S. 1047 (1996) *(Tinsley I); Tinsley v. TRW, Inc.*, No. PJM 96-273 (D. Md. Sept. 27, 1996), *aff'd*, 105 F.3d 648 (4th Cir., Dec. 31, 1996). Even assuming a question exists as to whether the Fourth Circuit had jurisdiction in *Tinsley II*, it is clear that the court's resolution of the issues in *Tinsley I* precludes the instant action.

Moreover, appellees' assertion of the affirmative defense of res judicata in its dispositive motion, rather than in a responsive pleading, *see* Fed. R. Civ. P. 8(c), did not preclude the district court from considering the issue. *See Stanton v. District of Columbia Court of Appeals*, 127 F.3d 72 (D.C. Cir. 1997) (appellate court considered affirmative defense made by party in pre-answer dispositive motion); *Carbonell v. Louisiana Dept. of Health & Human Resources*, 772 F.2d 185, 189 (5th Cir. 1985) (district court may raise defense of res judicata sua sponte when it has all relevant data and legal records and demand of comity, continuity in law, and essential justice demand it); *Gullo v. Veterans Cooperative Housing Ass'n*, 269 F.2d 517 (D.C. Cir. 1959) (per curiam) (district court may apply res judicata upon taking judicial notice of parties' previous case). Even though appellant demanded a jury trial, he was not entitled to one because summary judgment had been granted in appellees' favor. Furthermore, res judicata bars relitigation of appellant's claim even if the basis for the district court's initial decision in *Tinsley I* was incorrect. *See Page v. United States*, 729 F.2d 818, 820 (D.C. Cir. 1984)

(res judicata still applies even if initial judgment was erroneous). It is

FURTHER ORDERED that appellant's motion for sanctions be denied. Appellees' res judicata argument was not frivolous, and appellant has not otherwise shown that he is entitled to relief under D.C. Circuit Rule 38 or Fed. R. App. P. 46(b).

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

/s/ H.T.E.

/s/ P.M.W.

/s/ L.H.S.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EDWARD G. TINSLEY, Plaintiff,	)	
v.	)	Civil Action 98-940 (RCL)
EQUIFAX CREDIT INFORMATION SERVICES, INC., et al.,	)	(Filed Feb. 11, 1999) (Entered Feb. 16, 1999)
Defendants.	)	

MEMORANDUM AND ORDER

Plaintiff Edward G. Tinsley, pro se, filed this action against Equifax Credit Information Services, Inc. ("Equifax"), and Experian Information Systems, Inc. ("TRW"), for damages under the Fair Credit Reporting Act, 15 U.S.C. § 1681.

Defendants Equifax and TRW filed a motion to dismiss or, in the alternative, for summary judgment, relying upon the argument that this case is res judicata with two prior cases brought by the same plaintiff against these same two defendants, based on the same claims, in the United States District Court for the District of Maryland. In the first case, Judge Messitte granted judgment for the defendants on these claims. *See Tinsley v. TRW, Inc. et al.*, 879 F. Supp. 550 (D. Md. 1995), *aff'd*, 64 F.3d 659 (4th Cir. 1995), *cert. denied*, 116 S. Ct. 710 (1996). In the second case, Judge Messitte found that the complaint was virtually identical to the complaint in the first case, and held as follows:

> Since the instant complaint involves the same events over the same time period of time, the same parties, and the same issues as those involved in the prior adjudication, there is no question that the suit is barred by res judicata . . .

Tinsley v. TRW, Inc., No. PJM 96-273 (D. Md. Sept. 27, 1996). Once again, Judge Messitte's decision granting summary judgment in favor of Equifax and TRW against plaintiff was affirmed by the United States Court of Appeals for the Fourth Circuit, and certiorari was denied by the United States Supreme Court.

When Judge Messitte entered the second judgment against plaintiff (in 1996), he stated: "Tinsley has already had his day in court. This case is at an end."

Not to be deterred, plaintiff then filed this action in this court. Again, it is virtually identical to his first two cases. Accordingly, the motion of defendants to grant summary judgment to them based on res judicata must be, and is hereby, GRANTED, and plaintiff's cross-motion for summary judgment is DENIED.

By letter dated May 7, 1998, the defendants advised plaintiff of their motion filed that date, and requested that he withdraw his complaint within 21 days or they would file a motion for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. Plaintiff responded by filing his cross-motion for summary judgment on May 13, 1998, and additional points and authorities in support thereof on May 22, 1998, and a motion to deny defendants' motion on May 28, 1998.

Defendants then filed their motion for sanctions on June 1, 1998. Defendants correctly observe that this is the third lawsuit that plaintiff has filed against the defendants asserting identical claims and that there is no reasonable legal basis that justifies plaintiff filing this third suit. The Court agrees. Plaintiff's filing of this frivolous action interferes with efficient judicial administration, as it requires the Court's time away from deserving cases to address these same claims that have already been properly rejected. Even more important, it requires defendants to expend money for attorneys' fees to once again obtain a dismissal of plaintiff's claims. Rule 11 specifically provides in these circumstances that one in plaintiff's position must pay all reasonable costs and attorneys' fees incurred by the defendants. Accordingly, defendants' motion for sanctions is GRANTED. Defendants shall, within 20 days, submit their application for reasonable costs and attorneys' fees, and plaintiff may submit any opposition to the *amount* of costs and fees sought within 10 days thereafter.

Plaintiff's motion to strike an insufficient defense, filed December 15, 1998, is DENIED.

Plaintiff's motion to Strike Impertinent Matter, filed December 28, 1998, is also DENIED.

Plaintiff's request for a Hearing, and Application for a Hearing, both filed on December 30, 1998, are DENIED.

On January 15, 1999, plaintiff filed a motion to disqualify this Court on the basis that he, the plaintiff, had "inappropriately communicated with the Chief Judge of this Court, thus this Court's impartiality might reasonably be questioned." The Court agrees with defendants

that the test for disqualification under 28 U.S.C. § 455 is whether "an objective disinterested observer fully informed of the facts [of the case] . . . would entertain significant doubt that justice be done." *Union Carbine Corp. v. U.S. Cutting Serv., Inc.*, 782 F.2d 710, 715 (7th Cir. 1986). Plaintiff's communication to the Chief Judge, which he attached to his reply brief, is simply a complaint about getting this Court to decide the pending motions more quickly. It does not provide a basis for recusal. Indeed, recusal now would simply further delay this case, and facilitate judge-shopping anytime a judge had more pressing cases that delayed disposition of a matter by granting plaintiff's frivolous motion. Accordingly, plaintiff's motion for disqualification is DENIED.

SO ORDERED.

/s/ Royce C. Lamberth
Royce C. Lamberth
United States District Judge

DATE: 2-11-99

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EDWARD G. TINSLEY, Plaintiff, v. EQUIFAX CREDIT INFORMATION SERVICES, INC., et al., Defendants.	(Filed Feb. 11, 1999) (Entered Feb. 16, 1999) Civil Action 98-940 (RCL)

JUDGMENT

For the reasons set forth in a separate Memorandum and Order this date, summary judgment is hereby ENTERED in favor of defendants, against plaintiff, DISMISSING this case with prejudice.

Plaintiff shall pay to the defendants reasonable costs and attorneys' fees, in an amount to be separately determined by the Court.

SO ORDERED.

/s/ Royce C. Lamberth
Royce C. Lamberth
United States District Judge

DATE: 2-11-99

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EDWARD G. TINSLEY, Plaintiff, v. EQUIFAX CREDIT INFORMATION SERVICES, INC., et al., Defendants.	(Filed Apr. 21, 1999) (Entered Apr. 29, 1999) Civil Action No. 98-940 (RCL)

ORDER

Upon consideration of the applications of defendants for reasonable costs and attorneys' fees incurred by the defendants, and the plaintiff's opposition thereto – in which plaintiff does not contest the amounts sought, but only defendants' entitlement (a question already decided in the court's Memorandum and Order filed February 11, 1999) – the court finds that the amounts sought are reasonable and they are hereby awarded to defendants.

It is hereby ORDERED that:

1. Plaintiff pay $7,714.00 to defendants Experian Information Solutions, Inc., and TRW, Inc., and

2. Plaintiff pay $5,313.25 to defendant Equifax Credit Information Service, Inc.

SO ORDERED.

/s/ Royce C. Lamberth
Royce C. Lamberth
United States District Judge

DATE: 4-21-99

United States Court of Appeals
For The District of Columbia Circuit

No. 99-7031 **September Term, 1998**
98cv00940

Edward G. Tinsley,
Appellant

v.

Equifax Credit Information Services, Inc. and Experian Information Solutions, Inc., *f/k/a* TRW Information Services,
Appellees

(Filed Jul. 26, 1999)

(Entered Jul. 26, 1999)

BEFORE: Edwards, Chief Judge, Wald and Silberman, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing filed June 14, 1999, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/ Robert A. Bonner
Robert A. Bonner
Deputy Clerk

United States Court of Appeals
For The District of Columbia Circuit

No. 99-7031 **September Term, 1998**
98cv00940

Edward G. Tinsley,
Appellant

v.

Equifax Credit Information Services, Inc. and Experian Information Solutions, Inc., *f/k/a* TRW Information Services,
Appellees

(Filed Jul. 26, 1999)

(Entered Jul. 26, 1999)

BEFORE: Edwards, Chief Judge, Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel and Garland, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/ Robert A. Bonner
Robert A. Bonner
Deputy Clerk

Petitioner's Legal Claim

15 U.S.C. sec. 1681e(b) provides;
§1681e. Compliance procedures

(b) Accuracy of report

Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(Pub. L. 90-321, title VI. §607, as added Pub. L. 91-508, title VI §601, Oct. 26, 1970, 84 Stat. 1130.)

Petitioner's Equitable Claim

15 U.S.C. sec. 1681n provides;
§1681n. Civil Liability for willful noncompliance

Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of –

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(Pub.L. 90-321, title VI, §616, as added Pub.L. 91-508, title VI, §601, Oct. 26, 1970, 84 Stat. 1134.)